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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DR. MORGAN REYNOLDS, on behalf of	:	
The United States of America	:	
	:	
Plaintiff,	:	<u>ECF CASE</u>
vs.	:	
	:	February 5, 2008
SCIENCE APPLICATIONS	:	
INTERNATIONAL CORP., et al	:	07 CIV 4612 (GBD)
	:	
Defendants.	:	

**AFFIRMATION IN OPPOSITION TO MOTION FOR JOINDER (Docket #106)**

I, JERRY V. LEAPHART, am an attorney at law, duly licensed to practice before this and other courts and am attorney of record and Lead Counsel for plaintiff in the above captioned matter.

This affirmation expresses opposition to the Motion for Joinder, Docket #106, filed on or about February 5, 2008 by defendant Underwriters Laboratories, Inc. (UL).

The Reply memorandum filed by defendant Applied Research Associates Inc. (ARA) contains and relies on affidavits that are specific to ARA, including, by way of example, an affidavit providing reasons why an evidentiary admission made by ARA should have its weight minimized. UL has no part in that. Moreover, there is one other affidavit where ARA seeks to justify use of a “Summary Order” in an unreported case

published in a grouping of unreported Second Circuit cases, that specifically references a “then pending case” where the court had jurisdiction. However, in the body of the ARA brief, the contention is made that jurisdiction is not required in order to apply the “first-to-file” bar. Clearly, it would be improper for UL to be allowed to simply join in on a Reply containing personal affidavits that, upon analysis, contradict the claims of the party submitting them. The effect is that of allowing multiple parties to join in a bandwagon of ill-conceived arguments based upon claims in affidavits that cannot be verified or that, at a minimum, should not be joined, absent declarations that those who seek to do so are at least aware of the contradictions contained in the submittal they seek to join.

Annexed hereto as Exhibit 1 is a reference copy of what had been Exhibit A, in Docket # 104 Exhibit 4.

Annexed hereto as Exhibit 2 is the decision that is obtained when using the citation 172 F.3d 39 that does not yield the unreported, Summary Order, relied on by defendant ARA.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Jerry V. Leaphart

Dated: Danbury, CT  
February 5, 2008

**ELECTRONIC CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2008, a copy of the foregoing notice of Affirmation was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jerry V. Leaphart  
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